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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 738 - 43

THE PEOPLE OF THE STATE OF ILLINOIS ON RELATION OF WILLIAM EDWARD WOODS,
Petitioner,

v.

JOHN M. TUOHY, PRESIDING JUSTICE, GROVER C. NIEMEYER AND MICHAEL FEINBERG, JUSTICES, CONSTITUTING THE FIRST DIVISION OF THE APPELLATE COURT OF ILLINOIS FOR THE FIRST DISTRICT,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

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has been denied equal protection of the law in contravention of the 14th Amendment of the United States Constitution and subjected to a judicial wrong in violation of Article II, Sec. 19 of the Constitution of the State of Illinois. 46

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No. 738

THE PEOPLE OF THE STATE OF ILLINOIS ON RELATION OF WILLIAM EDWARD WOODS,

Petitioner,

v.

JOHN M. TUOHY, PRESIDING JUSTICE, GROVER C. NIEMEYER AND MICHAEL FEINBERG, JUSTICES, CONSTITUTING THE FIRST DIVISION OF THE APPELLATE COURT OF ILLINOIS FOR THE FIRST DISTRICT,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, the Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, The People of the State of Illinois on Relation of William Edward Woods, prays that a Writ of Certiorari issue to review the final order of the Supreme Court of the State of Illinois entered on January 10, 1950 in the above entitled cause in said Court, No. 31427, denying leave for your petitioner to file an original petition for peremptory Writ of Mandamus directed to the respondents herein commanding them forthwith to ex-

punge the judgment entered by them as judges constituting the First Division of the Appellate Court of Illinois for the First District on November 21, 1949, reversing the judgment of the Superior Court of Cook County, Illinois in a cause entitled, *William Edward Woods, Plaintiff* v. *The New York, Chicago & St. Louis Railroad Company, a corporation, defendant,* No. 47-S-1155, entered in said cause on May 7, 1948 for the sum of $40,000.00 in favor of relator against the said The New York, Chicago & St. Louis Railroad Company, on the verdict of the jury in an action brought under the Federal Employers' Liability Act (45 U.S.C. Secs. 51 *et seq.*) the Federal Safety Appliance Act (45 U.S.C. Sec. 11), and the Federal Boiler Inspection Act (45 U.S.C. Sec. 23), and commanding the respondents to affirm said judgment of the Superior Court of Cook County, and to review the order of the Supreme Court of the State of Illinois, entered in the above cause on January 18, 1950, denying your petitioner's motion for reconsideration of said order of January 10, 1950.

I.

Jurisdiction.

The jurisdiction of this Court is invoked under Title 28 United States Code, Sections 1651 and 1257 (3).

The subject action arose and was determined under the provisions of the Federal Employers' Liability Act (45 U.S.C. Secs. 51 *et seq.*), the Federal Safety Appliance Act (45 U.S.C. Sec. 11), and the Federal Boiler Inspection Act, (45 U.S.C. Sec. 23).

The railroad company admits liability under the provisions of the Federal Employers' Liability Act (R. 11, 28).

Relator was injured at about ten minutes before midnight in defendant's unlit Fort Wayne railroad yard on November 14, 1946, when he was caught between the side of the tender of a locomotive on which he was riding as it backed west on the main train and the side of a coal car standing on a spur track too close to the main track to provide sufficient clearance between it and the moving engine and tender. (R. 11, 28). The tender was equipped with a light on the rear which relator testified was out of focus throwing its rays up instead of down toward the track. When he got close enough to the coal car to see that it fouled the main track, he attempted to get around the corner of the tender, but before he could get to a place of safety he was caught and injured. (R. 11, 28).

The Appellate Court of Illinois for the First District, although holding that

> "an issue of fact to be determined by the jury was created if this alleged defect in the light can be made the basis of an action under the Boiler Inspection Act",

held that neither Rule 129 nor Rule 131 of the Interstate Commerce Commission required any rear light because at the time of injury the engine was backing to couple to the train and move it to Bellevue, Ohio, stating,

> "Its movements were within the exception stated in Rule 129(b) *supra*, and no headlight was required. Defendant being under no obligation under the Boiler Inspection Act to provide a light on the rear of the tender, it is not liable under that act if a light installed, but not required by the act, was not properly focused. No claim can be made that the projection of the rays of this light into the air created an 'unnecessary peril to life or limb' in the operation of the engine,"

and held that it was error requiring a reversal of the judgment to instruct the jury that the plaintiff was entitled to full damages if the jury found that the defective condition of the headlight contributed to cause plaintiff's injuries. (R. 13-14, Instruction 6, R. 17).

The Appellate Court also held that it was reversible error similarly to instruct the jury that there could be no deduction of damages on account of contributory negligence if the jury found that the fouling coal car was equipped with an inefficient hand brake which permitted the coal car to drift from a safe position to a fouling position, although that issue was not contested, but was, in effect, admitted by the railroad company at the trial. (R. 12-13, Instruction 7, R. 18).

The Appellate Court remanded the cause for further proceedings in accordance with its opinion, the effect being that the relator has finally and irrevocably been deprived of the benefit of the Boiler Inspection Act. (R. 26).

The relator duly filed in said Appellate Court a petition for rehearing (R. 26, 31-45), asserting that he had been erroneously denied the right to a trial by jury of the issues with respect to violation of the Federal Boiler Inspection Act and Federal Safety Appliance Act, contrary to the applicable State and Federal constitutional provisions, secured and guaranteed to him thereby; that the Appellate Court had erroneously decided federal questions under each of said acts contrary to their provisions and to the applicable and controlling federal decisional law interpreting them; that it had overlooked or misapprehended the scope and effect of the Boiler Inspection Act and of the power of the Interstate Commerce Commission to make rules and regulations thereunder and of the rules which have been promulgated and of the failure of the Interstate Commerce Commission to make other rules; and had overlooked or misapprehended evidence on both issues and

had invaded the province of the jury on the issue as to whether the hand brake on the coal car was efficient. The Appellate Court denied the motion for rehearing by order entered on December 2, 1949. (R. 26-27). Thereupon the relator duly filed in said Appellate Court a petition for leave to appeal to the Supreme Court of Illinois and for a Certificate of Importance, which was denied by the Appellate Court by order entered December 23, 1949. (R. 27-28, 45-50).

Thereupon, and on December 31, 1949, your petitioner filed in the Supreme Court of Illinois a petition for leave to file an application for peremptory Writ of Mandamus (R. 1-96) and at the same time the relator sued out from the Supreme Court of Illinois a Writ of Error in case number 31428, entitled *William Edward Woods, Plaintiff-in-Error* v. *The New York, Chicago & St. Louis Railroad Company, Defendant-in-Error,* and filed in the Supreme Court of Illinois, in case number 31429, entitled *William Edward Woods, Petitioner* v. *The New York, Chicago & St. Louis Railroad Company, a corporation, Respondent,* a petition for leave to appeal in order to exhaust all remedies open to the relator under the local laws of the State of Illinois and the rules of court relating to and regulating practice and procedure governing appeals and other forms of review. (R. 29)

The petition for leave to file a petition for peremptory Writ of Mandamus was denied by the Supreme Court of Illinois by order entered herein as of January 10, 1950. (R. 96-97). Thereupon your petitioner filed in said court a petition for reconsideration of the order denying the motion for leave to file an original petition for Writ of Mandamus which was denied by the Supreme Court of Illinois on January 18, 1950. (R. 97-103)

The Supreme Court of Illinois by order dated March 14, 1950, dismissed the relator's writ of error, and by order

dated March 16, 1950 dismissed relator's petition for leave to appeal to said court. Thus the relator has exhausted every remedy open to him in the State courts of Illinois in seeking vindication and enforcement of his federally created rights and will, in due course, file in this court petitions for certiorari to review said decisions of the Supreme Court of Illinois and of the Appellate Court of Illinois for the First District in the subject action, and petitioner respectfully requests that decision on this application be deferred and considered with the applications which the relator will make as before stated, unless the Court is willing to issue a writ of certiorari on this petition, and can order certified to it one, or both of the records, in Cases No. 31428 and No. 31429, and review all questions on the complete record.

Petitioner submits that the order of the Supreme Court of Illinois denying his application for leave to file a petition for peremptory writ of mandamus is a final order in an original proceeding in the Supreme Court of Illinois which is subject to review under the provisions of Section 1257 (3) of Title 28 of the Judicial Code, and, in view of the refusal of the Supreme Court of Illinois to review by writ of error or leave to appeal the judgment of the Appellate Court for the First District, constitutes an abuse of discretion and finally denies to the relator the right to a trial by jury and to equal protection of the laws in violation of the Seventh and Fourteenth Amendments of the Constitution of the United States.

Your petitioner further submits that this court has the authority and jurisdiction to review the orders of the Supreme Court of Illinois denying petitioner's motions for leave to file an original petition for peremptory writ of mandamus herein resulting of necessity in the denial of the relief requested in said petition, and for reconsideration thereof, under the provisions of Section 1651, Title 28 of the United States Code, and this court's inherent common law

jurisdiction to issue all writs necessary and appropriate in aid of its jurisdiction agreeable to the usages and principles of law.

Cases believed to sustain the jurisdiction of this Court are: *Brown* v. *Western Railway of Alabama,* 338 U. S. 294; *Urie* v. *Thompsan,* 337 U. S. 163; *United States Alkali Export Ass'n.* v. *United States,* 325 U. S. 196; *House* v. *Mayo,* 324 U. S. 42; *Ex Parte Republic of Peru,* 318 U. S. 578.

II.

Statutes Involved.

The subject action arose and was determined under the provisions of the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 *et seq.*), the Federal Safety Appliance Act, (45 U.S.C. Sec. 11), and the Federal Boiler Inspection Act, (45 U.S.C. Sec. 23), all of which are set forth in the appendix.

Also involved are Rules 101, 129 and 131 of the Interstate Commerce Commission (C.F.R. Title 49, Parts 1-19, §§91.101, 91.129, 91.131), which are likewise set forth in the appendix.

III.

Questions Presented.

1. Does the Federal Boiler Inspection Act itself, unaided and unrestricted by any order of the Interstate Commerce Commission, require that all parts and appurtenances of a locomotive and tender used on the line of an interstate common carrier by railroad be maintained at all times in proper condition and safe to operate in the service to which same are put without unnecessary peril to life or limb?